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Robert H. Corbin

May 28, 1987

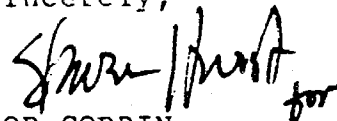
Mr. Barry M. Corey  
Corey & Farrell, P.C.  
177 North Church Avenue, Suite 600  
Tucson, Arizona 85701

I87-073 (R87-067)

Dear Mr. Corey:

Pursuant to A.R.S. § 15-253(B) our office has reviewed the opinions expressed in your March 26, 1987 letter to Alfred C. Strachan, Associate to the Superintendent, Staff Relations, Amphitheater School District. We concur with your conclusion that the offer of a teaching contract to a third year teacher who has not yet completed the entire school year is subject to the provisions of A.R.S. § 15-536 as opposed to A.R.S. § 15-538.01.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bob Corbin", with a stylized flourish at the end.

BOB CORBIN  
Attorney General

BC:TLM:cxp

# COREY & FARRELL, P. C.

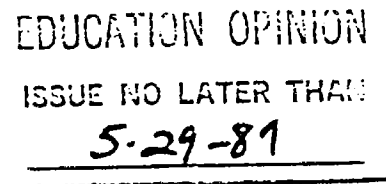
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March 26, 1987

Alfred C. Strachan  
Associate to the Superintendent  
Staff Relations  
AMPHITHEATER SCHOOL DISTRICT  
701 West Wetmore Road  
Tucson, Arizona 85705



R87- 067  
Martin  
3/30/87

Re: Interpretation of Section 15-538.01

Dear Mr. Strachan:

After our recent discussions, you requested an opinion from this office with regard to two questions, as follows:

Question One: Is the Governing Board's obligation to offer a contract to a third year teacher between the months of March 15 and May 15 controlled by A.R.S. §15-538.01 or by A.R.S. §15-536

Question Two: How is the phrase "more than the major portion" as that phrase is used in A.R.S. §15-538.01 to be calculated?

The answer to both of these questions depends on a careful analysis of the language contained in A.R.S. §15-536, §15-538.01, and, perhaps more importantly, A.R.S. §15-501, which contains definitions of the terms utilized throughout the chapter relating to school employees.

Subparagraph A of Section 15-538.01 provides, in pertinent part, that the Governing Board of a school district shall, unless the teacher is dismissed,

"between March 15 and May 15, offer to each certificated teacher who has been employed by the school district for **more than the major portion** of three consecutive school years and who is under contract of employment with the school district for the current year a contract renewal for the next ensuing school year . . . ." (Emphasis added.)

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The counterpart to that statute, which provides for the rights of teachers who have not yet attained that protected status is found in A.R.S. §15-536, which provides for the offer of a contract to each teacher

"who has not been employed by the school district for more than the major portion of three consecutive school years . . . ."  
(Emphasis added.)

unless there has been a notice of non-renewal.

Thus, the statutory distinction between a teacher who must be offered a contract unless dismissed and given notice of non-renewal (A.R.S. §15-538.01), and a teacher who must be offered a contract unless given a notice of non-renewal (A.R.S. §15-536) is found in an analysis of whether or not the teacher "has been employed by the school district for more than the major portion of three consecutive school years". Attributing the normal meaning to those words, in the absence of other statutory definitions, a teacher who is currently teaching his or her third consecutive full year between March 15 and May 15 would be a teacher who has been employed by the school district for more than the major portion of three consecutive school years and would be entitled to the protections afforded by A.R.S. §15-538.01. However, in 1986, the Arizona State Legislature adopted a definition of the words "major portion of a school year". See A.R.S. §15-501(5). That phrase is newly defined as a result of Senate Bill 1292 which was adopted as Chapter 399 of the Bills of the Second Regular Session of the 1986 Legislature. That legislation defined "major portion of a school year" as follows:

"5. 'Major portion of a school year' means full-time employment for fifty-one percent of the school days during which school is in session, except that a certificated teacher is not deemed to have completed the major portion of the third school year of three consecutive years of employment until the end of the third school year." (Emphasis added.)

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The protection set forth in A.R.S. §15-538.01 is available only to teachers who have been employed by the school district "for more than the major portion of three consecutive school years." However, a certificated teacher is not deemed to have completed "the major portion" of the third school year until the end of the school year (A.R.S. §15-501). The school year for Amphitheater School District ends after May 15. Since employment for more than the major portion of three consecutive school years" is required to invoke the protection set forth in A.R.S. §15-538.01, and since "the major portion of three consecutive school years is not deemed to have been completed until the end of the third school year, and since Amphitheater School District's school year does not end until after May 15, the only logical conclusion which can be drawn is that something in addition to the major portion of the third school year cannot take place until after the major portion itself has been completed; stated in other words, a teacher must be "deemed to have completed the major portion" of a school year before he or she can be deemed to have been employed for "more than the major portion" thereof. Since a third year teacher for Amphitheater School District has not yet completed the third year of employment on May 15, that teacher cannot (by statute) be "deemed to have completed the major portion of the third school year" until the end of the year. Since the teacher has not yet completed the "major portion of the third school year" the teacher can certainly not be said to have completed more than that major portion. Thus, it is the opinion of this office that the statute enacted in 1986 requires the completion of a third consecutive year of teaching and a new contract for the next year before attaining the protected status described in A.R.S. §15-538.01.

The major portion of the school year is also defined in A.R.S. §15-501(5) as meaning "full-time employment for fifty-one percent of the school days during which school is in session...." Thus, in calculating the "major portion" described in A.R.S. §15-536, and A.R.S. §15-538.01, the District must calculate fifty-one percent of the school days, and any teacher working that number of days or more will be deemed to have been employed for the major portion of that school year, subject to the statutory exception that the teacher will not be deemed to have completed the major portion of the third school year of three consecutive years until the end of the third school year.

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These conclusions are consistent with general methods of statutory construction. Where the language of the Legislature is clear and leaves no opportunity for interpretation, the language must be followed. Jackson v. Phoenixflight Productions, Inc., 145 Ariz. 242, 700 P.2d 1342 (1985). Similarly stated, "[w]here the language of a statute is plain or unambiguous, and the meaning does not lead to an impossibility nor an absurdity, the courts must observe the obvious and natural import of the language used therein; nor are they free to extend the meaning, though the result may be harsh, unjust, or mistaken policy." Ernst v. Collins, 81 Ariz. 178, 302 P.2d 941 (1956).

The object of the interpretation of any statute is to determine the intent of the Legislature, and this determination must be made by examining the words used by the Legislature.

"It is so axiomatic as to need no citation that the object of statutory interpretation is to determine the meaning and intent of the legislature. If the words in the statute are plain and unambiguous, courts will not go outside the language itself for interpretation."

Brown Wholesale Electric Company v. Merchants' Mutual Bonding Company, 148 Ariz. 90, 713 P.2d 291 (App. 1985).

Furthermore, where definitions of words play an integral role in the statutory interpretation, the definition afforded those words by the Legislature must be given effect.

"It is well settled that where a statute expressly defines certain words and terms used in the statute the court is bound by the legislative definition . . . ."

County of Pima v. School District No. One of Pima County, 78 Ariz. 250, 278 P.2d 430 (1954).

For all the foregoing reasons, we respectfully conclude that, the right of a third-year teacher in Amphitheater School District to the offer of a contract is controlled by the

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provisions of A.R.S. §15-536, not A.R.S. §15-538.01.

At first blush, the interpretation set forth above as to the applicability and effect of A.R.S. §§15-538.01 and 15-501 seem to change prior statutory law. Upon a more detailed analysis, however, that does not appear to be the case. Under prior law, a teacher acquired "continuing teacher" status after the teacher's contract had "been renewed for his fourth consecutive year ...." (prior A.R.S. §15-501(A)(3)). Thus, continuing teacher status was acquired only after the teacher's contract had been renewed between March 15 and May 15 of the third year. Under the current statutory scheme, once the teacher's contract has been renewed after the third year, the teacher is, likewise, entitled to the protections provided by A.R.S. §15-538.01. In each case, the difference in status was primarily the District's ability to terminate the teacher's employment by non-renewal as opposed to dismissal. That protection afforded to the teacher has not been significantly modified. In each case, the teacher is entitled to the offer of a contract between March 15 and May 15 of the fourth year of employment unless the teacher is "dismissed". Thus, it does not appear that there has been a significant change in the protection afforded to teachers under these statutes.

Thank you for permitting us to work with you in connection with this matter. If you have any questions, please do not hesitate to contact us.

Pursuant to your request, we are forwarding a copy of this opinion to the Office of the Arizona Attorney General for review.

Very truly yours,

COREY & FARRELL, P.C.



Barry M. Corey

BMC/tld